

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AUXIER FINANCIAL GROUP LLC,

Plaintiff,

v.

JP MORGAN CHASE BANK, N.A.; Bank of
America N.A. as Successor by Merger to
LASALLE BANK N.A. as TRUSTEE for
Washington Mutual Mortgage Pass-through
Certificates WaMu Series 2007-OA4 Trust, and
for Washington Mutual Mortgage Pass-Through
Certificates MWALT Series 2007 OC-1 Trust,

Defendants.

No. C10-2070 MJP

DEFENDANTS' NOTICE OF
INTENT TO FILE A SECOND
SURREPLY

Pursuant to Local Rule 7(g)(1), Defendants file this Notice of Intent to File a Second Surreply. The second surreply will address issues raised by Plaintiff's untimely filings of its Response to Defendants' Motion for Summary Judgment and supporting declarations thereto.

Defendants filed their motion for Summary Judgment on December 8, 2012, noting it for consideration on December 30 [Dkt. 22]. The deadline for Plaintiff to file its opposition brief was Tuesday, December 27 (because Monday, December 26 was a holiday). Local Rule 7(d)(3). Plaintiffs did not file any opposition brief on that date, so at about 1:00 a.m. on the morning of December 28, Defendants filed their reply brief [Dkt. 30]. Later that day, Plaintiff filed a Declaration of Josh Auxier, which was unsigned [Dkt. 31]. On December 30, the

1 deadline for Defendants to file a reply brief, Defendants filed a timely surreply that addressed
 2 the “facts” and arguments set forth in Mr. Auxier’s declaration [Dkt. 34]. Later, on the day of
 3 December 30, Plaintiff’s counsel filed a declaration which purported to be “In Support of
 4 Plaintiff’s Response in Opposition to Defendants’ Motion for Summary Judgment” [Dkt. 33],
 5 but Plaintiff had not yet filed an opposition brief.

6 Earlier today, exactly one month after the deadline for Plaintiff to oppose Defendants’
 7 summary judgment motion, Plaintiff filed an opposition brief along with supporting
 8 documentation. Plaintiff’s counsel claims that a combination of moving offices, being a slow
 9 typer, and “significant snow and wind” prevented Plaintiff from filing these documents at any
 10 time during the last month, even though Plaintiff’s counsel began work on them on December
 11 19, 2011. *See* Mueller Decl., [Dkt. 38] ¶¶ 3-5, 12-14.

12 DATED this 26th day of January, 2012.

13 Davis Wright Tremaine LLP
 14 Attorneys for Chase and Bank of America


15 By /s/ Matthew Sullivan
 16 Fred B. Burnside, WSBA #32491
 17 Matthew Sullivan, WSBA #40873
 18 E-mail: fredburnside@dwt.com
 19 E-mail: matthewsullivan@dwt.com

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on January 26, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

- Edward L. Mueller
elm@muellerlawfirm.net

DATED this 26th day of January, 2012.


Sheila Rowden